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By Fax

Hon. Richard J. Holwell  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York

USDC SDNY  
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Re: New York State Restaurant Ass'n v. New York City Bd. Of Health  
Index # 07 Civ. 5710 (RJH)

Dear Judge Holwell:

This office represents defendants in the above-captioned matter. I write in response to the July 31<sup>st</sup> letter of Nancy Milburn that requests that plaintiff's time to respond to the defendants' cross-motion for summary judgment on the First Amendment claim be postponed until thirty days after Your Honor rules on the parties' motions for summary judgment on the preemption claim and the plaintiff's motion for a preliminary injunction on the First Amendment claim. In the interest of not delaying a decision on these fully submitted motions, the defendants have decided at this time to withdraw their motion for summary judgment on the First Amendment claim.

SO ORDERED

RJH  
USDT  
8/6/07

Respectfully submitted,

Mark W. Muschenheim (MM 0498)  
Assistant Corporation Counsel

cc: Peter L. Zimroth, Esq. (By Fax)  
All Amici Counsel (By E-mail)